

THE SPAYD



News from the Bankruptcy Front

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District of Columbia

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Interview of the Honorable S. Martin Teel, Jr. Regarding the Bankruptcy Abuse Prevention and Consumer Protection Act and Electronic Case Filing

During the month of November 2006, Katina Tyson, former Operations Administrator in the Clerk's Office, interviewed Bankruptcy Judge S. Martin Teel, Jr. regarding the effects of BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8 (generally effective October 17, 2005)] and the implementation of ECF (the court's Electronic Case Filing system). The interview covered Judge Teel's views regarding:

- traps for the unwary debtor under BAPCPA;
- problems attorneys encounter with ECF; and
- the effects of BAPCPA on the volume of bankruptcy case filings.

TRAPS FOR THE UNWARY DEBTOR UNDER BAPCPA

TYSON: Judge Teel, I've heard that BAPCPA has created some traps for the unwary. What are some of the traps that debtors should be cautious about under BAPCPA?

The § 109(h) Budget and Credit Counseling Traps

JUDGE TEEL: Trap # 1 is failing to obtain § 109(h) budget and credit counseling in the specified time period prior to the day of filing the bankruptcy petition ["the 180-day period preceding the date of filing of the petition"].

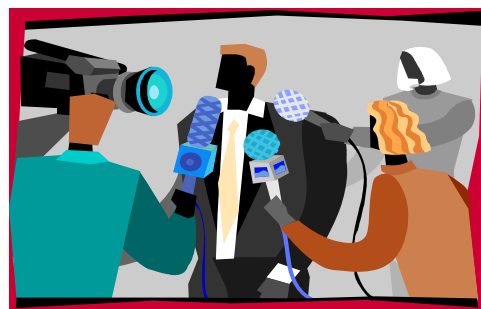
TYSON: So the debtor can't cure the lack of counseling by obtaining it after filing their petition?

JUDGE TEEL: With some exceptions that are very difficult to come within, that's right. Congress wanted debtors to be coun-

seled *before* they file.

TYSON: Can the counseling be obtained the same day as filing the petition?

JUDGE TEEL: You have to look closely at the language of § 109(h). To be eligible to file a case, an individual debtor generally must obtain the required counseling "during the 180-day period preceding the date of filing of the petition." I have interpreted that as meaning that the required briefing must occur no later than the day before the petition is filed. [*In re Mills*, 341 B.R. 106 (Bankr. D.D.C. Apr. 20, 2006) (available on the court's website).] But other courts have



ruled otherwise.

TYSON: Are there any other timing traps under § 109(h)?

JUDGE TEEL: A related problem is that the debtor must have obtained the counseling no earlier than 180 days preceding the date of filing the petition.

TYSON: Are there any other problems under § 109(h)?

JUDGE TEEL: Yes, mistakenly thinking that any briefing by a credit counseling agency satisfies § 109(h). Some debtors obtain credit counseling from an approved credit counseling agency before the date of filing their petition, but forget to tell the agency that it is to satisfy the § 109(h) requirement. Credit counseling agencies give a slightly different form of counseling when it is for § 109(h) purposes than they give when bankruptcy is not involved, and decline to issue a § 109(h) certificate for non-bankruptcy credit counseling. Beyond that, some debtors confuse a § 109(h) certificate with Form 23 [Certification of Completion of Instructional Course Concerning Financial Management] which addresses a wholly different requirement of completing a course concerning financial management *after* the petition has been filed.

So, to be safe:

(1) a debtor should have

a § 109(h) certificate in hand prior to filing the petition, (2) the certificate should indicate completion of the counseling on a date no later than the day before filing the petition, and no earlier than 180 days preceding the date of filing the petition, and (3) the debtor should not submit a Form 23 as a certificate regarding § 109(h).

The Form 23 Trap

TYSON: Are there any traps that Form 23 itself creates?

JUDGE TEEL: Yes. Failing timely to file the Form 23 [Certification of Completion of Instructional Course Concerning Financial Management] can be a costly mistake. Form 23 is a prerequisite to an individual's obtaining a chapter 7 or 13 discharge. [See 11 U.S.C. §§ 727(a)(11) and 1328(g)(1).] If a debtor fails timely to file a Form 23, the case gets closed without a discharge being granted. Although the case can be reopened to grant a discharge, it requires payment of a reopening fee equal to the fee for filing a petition.

The Automatic Dismissal Trap

TYSON: Are there any other traps that arise from failing to file required papers?

JUDGE TEEL: Oh yes, a big trap is suffering an automatic dismissal under § 521(i) by not filing the papers required by §

521(a)(1) within 45 days after the filing of a voluntary chapter 7 or 13 petition.

TYSON: Could you explain how that works?

JUDGE TEEL: § 521(a)(1) requires that an individual debtor in chapter 7 or 13 file:

- a list of creditors (which can be the mailing matrix with a certification under penalty of perjury as to its correctness as a list of creditors);
- schedules (Official Form 6);
- statement of financial affairs (Official Form 7);
- Form 22A, 22B, or 22C (depending on the chapter in which the debtor is filing);
- certificate of compliance with § 342(b) (receipt of explanation of different chapters, etc.) when the debtor's debts are principally consumer debts; and
- copies of certain recent payment advices.



If an individual debtor in a chapter 7 or 13 case fails within 45 days after filing of a voluntary petition to file any of those documents, then--with some exceptions that require a timely motion--"the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition." So it is very important that the debtor file all such documents by the 45th day.

TYSON: But I'm looking at the statute, and § 521(a)(1) also says a debtor must file a statement disclosing any reasonably anticipated increase in income or expenditures. Why haven't you mentioned this requirement?

JUDGE TEEL: That statement is now part of Schedules I and J, and no separate statement is required. That was puzzling to me too until I realized where the statement is included on Schedules I and J.

TYSON: Section 521(a)(1)(B)(v) also requires "a statement of the amount of monthly net income, itemized to show how the amount is calculated." Is that the same as Form 22A, Form 22B, or Form 22C?

JUDGE TEEL: Yes, those forms (for chapters 7, 11, and 13, respectively) each have a title that begins "Statement of Current Monthly Income."

Section 521(a)(1)(B)(ii) requires "a schedule of current income and current expenditures."

That's Schedules I and J. In contrast, Form 22A, 22B, or 22C, as the case may be, is the form used to meet the additional requirement of "a statement of the amount of monthly net income, itemized to show how the amount is calculated," something more than just what appears on Schedules I and J. This is evident from 11 U.S.C. § 707(b)(2)(C) which contemplates that the so-called means test will be part of what must be filed under § 521(a), and Form 22A is obviously the form used for the means test.

Trap of Thinking § 521(i) Gives the Debtor 45 Days to File Papers

TYSON: So as long as a debtor files the papers required by § 521(a)(1) within 45 days after filing the petition, the debtor is safe?

JUDGE TEEL: No. That's another trap: thinking that § 521(i) automatically grants a debtor 45 days to file required papers.

First, the list of creditors must be filed with the petition. [See Rule 1007(a)(1) of the Federal Rules of Bankruptcy Procedure.] Filing that list is critical, since notice cannot be sent out to creditors until that is done. If the debtor does not promptly correct a failure to file the list, the court will dismiss the case well before the 45-day mark.

Second, the debtor's schedules

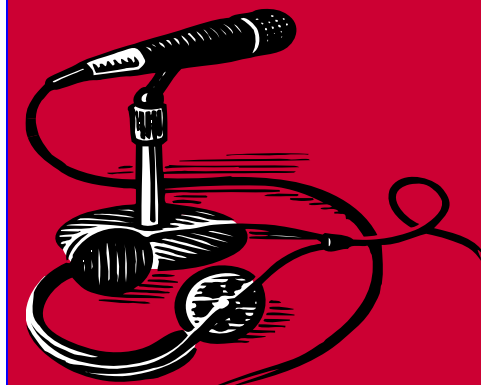
and statement of financial affairs must be filed within 15 days after the filing of the petition. If they are not timely filed, a motion to dismiss or order to show cause can ensue, and if the debtor does not respond satisfactorily, the case can be dismissed. The irony is that extensions of time to file the schedules and statement of financial affairs are liberally granted if the debtor demonstrates the need for more time as long as the papers are filed in time for the trustee to examine them in preparation for examining the debtor at the meeting of creditors.

Failure to Provide Trustee Copy of Last Required Income Tax Return

TYSON: So, are there any other traps that can arise from filing requirements?

To access this interview in its entirety, please click on The following link:

Judge Teel Interview



DEAR BANKRUPTCY FILERS... A NOTE FROM CHAMBERS



Parties should provide two courtesy copies of any written submission that exceeds fifty pages in length (including exhibits, appendices, support documents, or any other attachments). Whenever possible, Judge Teel prefers that courtesy copies be bound, tabbed, and indexed in a manner that facilitates easy use of the copy in chambers or from the bench. Copies should be delivered to the Clerk's Office for distribution to chambers after the original submission is filed. The copies should be marked as chambers copies so that the Clerk's Office will know to distribute them to chambers staff. Chambers copies of written submissions delivered less than forty-eight hours before a hearing on a matter relating to the submission should have a red cover page signifying that the copies require immediate distribution. Chambers will only accept delivery of courtesy copies in emergency situations.

SOME NEW EVENTS IN CM/ECF

The Clerk's Office created a few new events in CM/ECF to assist the e-filing community with its electronic filings.

1. *Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement.* This *Miscellaneous* event should be used when Exhibit D has not been filed as a labeled attachment, or bookmarked pdf, to the voluntary petition.
2. *Records of the Debtor's Interest or No Interest in an Acct or Program (IRA).* This *Miscellaneous* event prompts the user to answer "Yes" or "No" to the question, "Does the Debtor have an Interest in an Account or Program of the Type Specified in 11 U.S.C. 521(c)?" If the answer is *yes*, please file the records. If the answer is *no*, the debtor must file a statement that no such records exist.
3. *Amended Application for Compensation.* This event, located under *Motions/Applications*, is for amending Applications for Compensation.
4. *Amended Motion for Relief from Stay.* This event, located under *Motions/Applications*, is for amending Motions for Relief from Stay.



Court Fee Increases Effective January 1, 2007



Please be advised that effective January 1, 2007, there will be an increase in several court filing fees.

The increases range from an additional \$15 for some pleadings, to an increase of \$200 for others. Following is a listing of all increased fees and their related filings:

- **\$260.00** for Reopening a Chapter 7 case;
- **\$235.00** for Reopening a Chapter 13 case;
- **\$260.00** for Splitting a Joint Chapter 7 case;
- **\$235.00** for Splitting a Chapter 13 case;
- **\$255.00** for Direct Bankruptcy Appeal to the Court of Appeals. If the Direct Appeal is authorized by the Court of Appeals, then an additional **\$200.00** fee is due the Bankruptcy Court for a total of **\$455.00**;
- **\$25.00** for Converting a Chapter 13 case to a Chapter 7;
- **\$60.00** for Converting a Chapter 12 case to a Chapter 7;
- **\$35.00** for Converting a chapter 12 case to a Chapter 13.



A FEW HISTORICAL BANKRUPTCY FACTS

- In Italy during medieval times if a businessman did not pay his debts the common practice was to destroy his trading bench. Hence the term bankruptcy, derived from the Italian terminology "banca rotta" which means broken bench.
- Before the turn of the 20th century bankruptcy rules and practices were in the favor of creditors. Predominately all bankruptcies were involuntary and harsh on the debtor.
- Forms of punishment of debtors in the mid-nineteenth century consisted of imprisonment, forfeiture of all property, and even death. The common law of the era authorized "body execution," (seizure of the body of the debtor, to be held until payment of the debt).
- The English bankruptcy system during the 18th century did not approve relief for debtors; it was more or less relief from debtors. Discharges of debt were not a practice of this particular system.
- Creditors were free to collect debts from debtors after a bankruptcy was completed.
- The first federal bankruptcy law was passed on April 4, 1800 and repealed in 1803.
- Imprisonment of debtors was abolished at the federal level in 1833; many states followed the practice in the 1830s and 1840s.
- The voluntary filing of a bankruptcy proceeding and the ability to receive a discharge was approved and passed in 1841, and later repealed in 1843.
- The Bankruptcy Act of 1867 allowed the filing of voluntary and involuntary cases. This law was repealed in 1878.
- The strongest bankruptcy act was the Bankruptcy Reform Act of 1978. This law made it easier for individual debtors and businesses to file and reorganize.

Two prominent corporate bankruptcies of the 1970s were Penn Central Transportation Corporation in 1970 and W.T. Grant Company in 1975.

SOURCES:

Information of historical facts was collected from the following sources:
Bankruptcy-Data.com, a Division of New Generation Research, Inc.
Charles J. Tabb,...



Continued

**the History of the
Bankruptcy Laws
in the United
States**

**[www.fjc.gov/
history](http://www.fjc.gov/history)**
**[www.bankruptcyfinder.com/
historyofbkinausa.html](http://www.bankruptcyfinder.com/historyofbkinausa.html)**

Fruit Cake for People Who Hate Fruit Cake

A Recipe by Chief Deputy, Patti Meador

I grew up in an Italian family. Italians love fruit cake. As a child, I hated fruit cake. So, my grandmother who felt everyone should eat it, put a different spin on her recipe (that is why the name of the recipe is quite appropriate). So if you hate those dried up, cardboard tasting fruit cakes, try my grandmother's recipe. I think you will like it.

1 lb. butter

6 eggs

4 cups flour

½ tsp salt

¼ lb candied pineapple

1 lb. Pecans

2 1/3 cup sugar

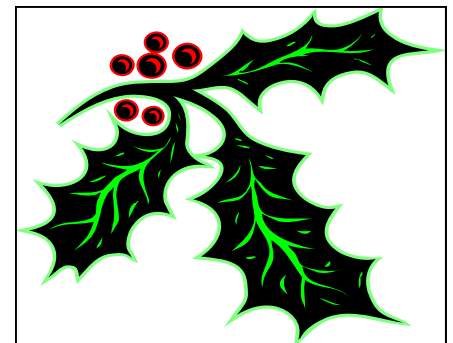
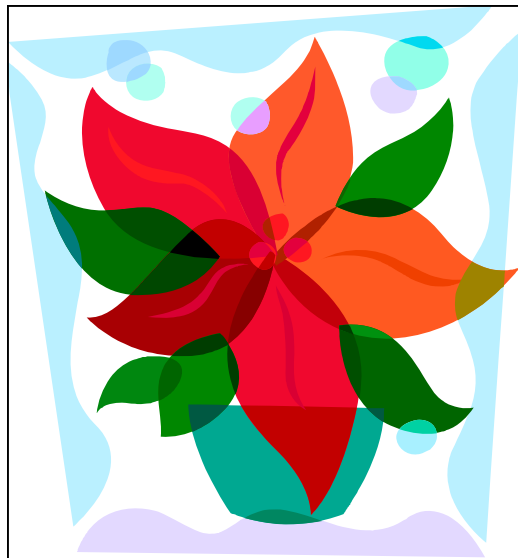
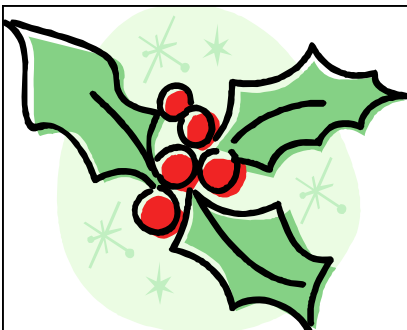
3 oz. lemon juice

1 ½ tsp baking powder

½ cup candied cherries

¼ lb white raisins

Cream together butter and sugar; add eggs and beat well. Add lemon juice. Sift together dry ingredients and add to butter mixture; mix thoroughly. Stir in cherries, pineapple, raisins and pecans. Bake in loaf pans, greased and floured at 300 degrees for 2 hours.



NEWS FLASH: The US District and Bankruptcy Court for the District of Columbia is looking to hire *2 Case Administrators!*

The United States District and Bankruptcy Court for the District of Columbia is seeking two well-qualified candidates for the position of Case Administrator (formerly known as Operations Administrator). Applicants must be able to work in a fast-paced, multi-faceted organization that requires outstanding organizational and interpersonal skills, flexibility and a strong customer service or team oriented background.

Duties include: monitoring and quality controlling of cases; making summary entries of all paper documents and proceedings; and acting as a liaison between chambers, members of the bar and the public regarding the status of cases.

These positions are opened until filled. Applicants must submit a cover letter, detailed resume and a completed Application for Judicial Branch Federal Employment (<http://www.dcd.uscourts.gov>). Please see job announcement # 2006-07 at www.usajobs.gov for additional information.

**Please remember to call the BK Clerk's
Office's *CM/ECF Help Desk* at
(202) 565-2506 for answers to all your
CM/ECF questions.**

**As always, we thank you for your patience
during this time of transition.**

**The next issue of *The Spayd* will be
published during the first quarter of 2007.**

**Articles written by
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**Article designs and layout by
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Sources: BankruptcyData.com, a Division of New Generation Research, Inc.

Charles J. Tabb, the History of the Bankruptcy Laws in the United States, www.fjc.gov/history, www.bankruptcyfinder.com/historyofbkinusa.html

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